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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,617	01/16/2001	Gene A. Bornzin	A01P1002	7875

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EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

LC

Office Action Summary	Application No.	Applicant(s)
	09/764,617 Examiner Frances P. Oropeza	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 August 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment and Request for Reconsideration filed 8/13/02

1. The Applicant's arguments with respect to claims 1-22 have been fully considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. Claims 1, 4, 6, 9-16 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett et al. (US 5226413). Bennett et al. disclose a method for automating review of capture verification (c 7, ll 11-16). The capture and loss-of capture is monitored through pressure values (c 5, ll 26-30, c 13, ll 59-64; c 14, ll 14-24). Data can be displayed on a video monitor, graphic display interface or a printer (c 8, ll 17-33). A marker channel is used to identify events including capture and loss of capture (c 11, ll 21-30) (As disclosed by the referenced US 4374382 to Markowitz, events occurring in refractory periods are accepted as non-capture events). Pacing threshold is assessed, a safety margin added to the value to determine pacing amplitude and pulse width and the values displayed (c 8, ll 27-30; c 9, ll 65-66; c 11, l 55 – c 13, l 11).

Claim Rejections - 35 USC § 103

3. Claims 2, 3, 5, 7, 8, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett et al. (US 5226413) in view of Olive et al. (US 5855594). As discussed in paragraph 2 of this action, Bennett et al. discloses the claimed invention except for:

- specifying if the atria or ventricle is selected (claim 2),
- providing and selecting from a plurality of unique means for automatic capture verification (claim 3),

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- identifying physiological atrial and ventricular events (claim 5),
- identifying atrial and ventricular pacing pulses (claim 7),
- defining and recording the amplitude and duration characteristics for each pulse (claim 8),
- performing the automatic capture verification using the intracardiac electrocardiogram (claim 17), and
- obtain and perform the automatic capture verification using the surface electrocardiogram (claim 18).

Olive et al. disclose a self calibrating system for capture verification in pacing devices and teach that it is known to:

- specifying if the atria or ventricle is selected (claim 2) (c 5, ll 49-57),
- providing and selecting from a plurality of unique means for automatic capture verification (claim 3) (c 2, ll 24-32 and c 3, l 45 – c 4, l 43),
- identifying physiological atrial and ventricular events (claim 5) (c 5, ll 49-57),
- identifying atrial and ventricular pacing pulses (claim 7) (c 5, ll 49-57),
- defining and recording the amplitude and duration characteristics for each pulse (claim 8) (c 3, ll 9-30),
- performing the automatic capture verification using the intracardiac electrocardiogram (claim 17) (c 8, ll 21-26), and
- obtain and perform the automatic capture verification using the surface electrocardiogram (claim 18) (c 8, ll 21-26).

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Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method for automating review of capture verification as taught by Bennett et al., with the operational details of the capture verification test in atrial and ventricular chambers as taught by Olive et al. to define the steps and features required for accurate dual chamber capture verification so changes in the patient's stimulation threshold are accurately tracked in both chambers allowing for more effective adjustments in the level of stimulation pulses (c 2, ll 33-37).

Other Prior Art Cited

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4374382 to Markowitz teaches capture and non-capture markers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

GEORGE R. EVANISKO
PRIMARY EXAMINER

10/20/2